



DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA-2012-0003]

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), this document provides the public notice that by a document dated December 23, 2011, the McCreary County Heritage Foundation, Inc. (MCHF), on behalf of the Big South Fork Scenic Railway (BSFSRY), has petitioned the Federal Railroad Administration (FRA) for a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR Section 215.303. FRA assigned the petition Docket Number FRA-2012-0003.

Specifically, MCHF/BSFSRY seeks a waiver of compliance from the railroad freight car safety standards found at 49 CFR § 215.303, which requires stenciling on restricted freight cars in clearly legible letters “R” followed by the basis of the restriction. This request is made for seven flatcars that were modified as “open air” and enclosed passenger cars (Car Numbers K&T 1001, 1002, 1003, 1004, 1005, 1006, and 1007) and one caboose (Car Number K&T Cab. 1).

As information, MCHF/BSFSRY also requested a Special Approval to continue in service the same cars in accordance with 49 CFR § 215.203(c). The ages of these cars are more than 50 years from their original construction dates, and therefore, are restricted

per 49 CFR § 215.203(a), unless MCHF/BSFSRY receives a Special Approval from FRA.

MCHF/BSFSRY states that it is a 501(c)3 not-for-profit organization. This tourist railroad operates on a 7-mile portion of former Kentucky & Tennessee Railway right-of-way out of Stearns, KY. Operation of BSFSRY is entirely for historical, educational, and excursion purposes by employees of MCHF. BSFSRY is a non-insular tourist operation and does not interchange any of the equipment subject to this petition with the general system of railroads.

MCHF was incorporated in Kentucky in 1987. Since 2000 MCHF has operated BSFSRY as a historical tourist railroad for the purpose of providing an opportunity for the public to view and experience a ride on the historic Kentucky & Tennessee Railway into the river gorge of the Big South Fork of the Cumberland River. The cars are operated at a maximum speed of 15 mph, typically 16–30 times a month from April through October, and average 80 miles per week. Special trains are operated 6–12 times a month in October, November, and December, and these cars travel an average of 50 miles per week. These cars carry no more than 15 tons of payload (passengers and modifications), which is less than 30 percent of their original design capacities of 40 to 60 tons. The caboose subject to this petition is used as a passenger car for small private parties. A BSFSRY attendant is always onboard the caboose.

BSFSRY states that the cars subject to this petition do not interchange with any railroad and as such are in captive service. The stenciling requirement would affect the appearance of the renovated cars that have been preserved for historical, educational, and interpretive purposes.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at www.regulations.gov and in person at the U.S. Department of Transportation's (DOT) Docket Operations Facility, 1200 New Jersey Avenue, S.E., W12-140, Washington, D.C. 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- Web site: <http://www.regulations.gov>. Follow the online instructions for submitting comments.
- Fax: 202-493-2251.
- Mail: Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, S.E., W12-140, Washington, D.C. 20590.
- Hand Delivery: 1200 New Jersey Avenue, S.E., Room W12-140, Washington, D.C. 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by [INSERT DATE 45 DAYS FROM PUBLICATION OF THIS NOTICE] will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable.

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the Federal Register published on April 11, 2000 (Volume 65, Number 70; Pages 19477-78), or online at <http://www.dot.gov/privacy.html>.

Issued in Washington, DC, on October 2, 2012.

Ron Hynes
Director, Office of Safety Assurance and Compliance

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